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ABSTRACT

The United States Supreme Court case, Meese v. Keene, in which the justices narrowly defined the meaning of the term "political propaganda," failed to address adequately the complexities of the issue. In this case it is necessary to bring together divergent views about communications in the analysis of the legal problem, including historical methods of information control, case law, the arguments in the case, social science findings, and press model research. The case centered on the right of the government to label certain films as "political propaganda." In Meese v. Keene the Court: (1) failed to deal with the questions about persuasion from the body of knowledge that exists; (2) considered some and rejected other "evidence" without regard for the role of theory in science; (3) took a very limited view of social science research as evidence; and (4) did not consider studies on the role of free expression in democracies. The majority in Meese v. Keene took the view that the term "political propaganda" is neutral, but except for the narrow legal fiction of statutory language, this cannot be satisfactory. The dissenters argued that the label burdens discourse without serving a strong governmental interest. Rather than promoting pluralism, the use suggests a singular view of "truth." (Ninety-five notes are included.) (MS)

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"Political Propaganda"
An Analysis of the U.S. Supreme Court Decision in Meese v. Keene

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It is no simple matter to distinguish "objective" information from "propaganda" in the complex world of communications. The highest courts have had little success in finding workable definitions. In general, there is a tendency to reach for legal fictions or narrow rules to solve questions of the moment and to leave broader questions unanswered.

So it was that when the U.S. Supreme Court decided Meese v. Keene[1] justices narrowly defined the meaning of the term "political propaganda" in holding that the strict statutory language would be applied. The case is a useful example of how a free society may find itself in conflict over the free flow of competing messages.

In this essay the author attempts to bring together divergent views about communications in the analysis of the legal problem: historical methods of information control, case law, the arguments in the case, social science findings and press model research are blended. The thesis advanced here is that the Court failed to address adequately the complexities of the issue.

The majority in Meese v. Keene took the view that the term "political propaganda" is neutral, but except for the narrow

legal fiction of a statute, this does not withstand rigorous scrutiny. The dissenters in the case argued that the label burdens discourse without serving a strong governmental interest. Rather than promoting pluralism, the usage suggests a single view of "truth."

Information Control

Information control can be thought of from three different perspectives: the historical view of press censorship; a theoretical view of social control; or an empirical view of social isolation.

The Historical View of Press Censorship

Siebert[2] considered three main variables in the growth and decline of press freedoms in England during a 300 year period: (1) the number and variety of controls by the government; (2) the efforts made to enforce regulations; and (3) the degree of compliance.

The Star Chamber, the ecclesiastical commissions and the Stationers Company brought the force of law to the regulation of printing through proclamations, subsidies and monopolies.[3] A high point for both enforcement and compliance came under Cromwell in an order that led to "the first reasoned arguments for a free and uncontrolled press in the writings of the Puritan and nonconformist thinkers."[4]

In the development of an American philosophy of free expression, these early writings were important. And the right to disseminate and receive religious thoughts -- or propaganda -- was certainly a driving force in the writings of the period.

Thus, Jefferson and Madison viewed sovereignty of a king as limited by natural law.[5] This left government in a radically new position with the people.

Levy[6] notes that the First Amendment was almost without precedent since under the Star Chamber "law" a libel against a government official was a greater offense than a private libel; it scandalized the government itself.[7]

While free speech had been limited in colonial America, Levy found that Patriot leaders learned to use propaganda to help their cause:

> Colonial patriots identified the royal judges and their common law of seditious libel with Star Chamber tyranny and the slightest suggestion from government supporters that patriot propagandists were licentiously abusing their privileges of free speech and press.8

From this perspective, propaganda can be seen as a natural element in free society; it historically has had its place in the forum of free expression. And yet, propaganda also has had a history in connection with social control.

A Theoretical View of Social Control

It is possible to view propaganda as conceptualized within a broader framework of political theory: It appears to have a role in legitimation, democracy, social administration, public opinion, social control and the modern nation-state.[9]

This recent view bridges the historical notion of "censorship" with the developing idea that a relationship exists between information control and the persuasive speech sometimes called "propaganda." If propaganda and information management are negative aspects of modern society, then we may find that we come

to expect it.[10] But we need not assume the existence of a "ruling elite" to accept the proposition that a society can manage information for purposes of social control. We have many institutions of active persuasion, mechanisms for censorship and secrecy, information commodification, and the proliferation of information gathering that can operate normally within a free system.[11]

Thus, it is possible that members of a free society need a multitude of propaganda from different sources -- with varying degrees of management and/or censorship -- to make decisions about daily life. For example, advertising propaganda can be useful to the consumer wishing to buy something, even though persuasive material may be an oversimplification or exaggeration.

Decisions, whether they be buying decisions or other ones individuals make, may also be viewed from the behavioral social science perspective. In turning to this third perspective, the reader should see a logical link between propaganda, information control and public opinion.

An Empirical View of Social Isolation

Instead of attempting to paint a broad societal view, social scientists have placed the individual at the center of investigations. Noelle-Neumann, drawing on the psychological literature, developed an empirical, quantitatively supported view that argues society pressures the individual to conform through the use of communicatory behavior: "To the individual, not isolating himself is more important than his own judgment."[13] Public opinion can be defined as "dominating opinion which compels

compliance of attitude and behavior in that it threatens the dissenting individual with isolation, the politician with loss of public support."[14]

Censorship and propaganda work within the socially controlling public opinion, in the Noelle-Neumann view, and the critical issue becomes one of cue to the majority position, once that opinion is staked out. For when an opinion becomes the majority view in a democracy, minority positions may be shut out as mass media emphasize official positions. The danger is that media may create artificial majorities.

In the present study of the Meese v. Keene[15] decision, it is also worth considering propaganda as a form of broader "objectionable" material as decided by the majority and emphasized by the media. In treating information control as simply a question of whether or not various content types are objectionable, propaganda as a category of expression is little different from obscenity: objectionable material often defies a specific definition. It is, therefore, worth reviewing obscenity law from this broader perspective.

Relevant Case Law

Courts have had to deal with questions about the allowance of political propaganda in a free society. Justices Holmes and Brandeis early in the century argued for a free trade of ideas, remembering the history of censorship. Developing ideas of the Puritan and nonconformist thinkers, the justices argued that the First Amendment stands for the proposition that truth can emerge from competing ideas in a public marketplace.[16]

The so-called "clear and present danger test" permitted punishment when words were used that "bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."[17] Free speech has been viewed as not absolute; it must be balanced against other competing interests in the Bill of Rights.[18] But while speech may be punished subsequently, the general rule of law has been that the First Amendment protects speakers against prior restraint by the government.[19]

Yet, a certain type of speech often seen to lack political value in a self-governing society is obscenity. The U.S. Supreme Court has developed a three-part test with the trial court -- judge or jury -- deciding: (1) whether an average person, applying contemporary standards, would find that the material appeals to purient interests; (2) whether the work depicts or describes in patently offensive manner, sexual conduct as defined by state law; and (3) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.[20] The Miller v. California test has been used in some states to limit the right of a censor in the showing of hard-core pornographic films.[21] An implication of the information control exerted in pornography is that this type of objectionable material should be kept from the eyes and ears of the citizenry, particularly youth, who might be persuaded toward sexual deviance, so defined by the majority as a sort of pornoganda against the mores of the majority. From an information control perspective, pornography as free speech today faces traditional problems of government control, regulation enforcement and degree of compliance.

In a recent decision, Pope v. Illinois, two Rockford adult bookstores had been charged with violating a state obscenity statute in the sale of magazines.[22] At separate trials, juries had been instructed to apply Miller. Upon being found guilty, the store owners appealed, arguing that the third prong of the test -- literary, artistic, political or scientific value -- should be determined objectively. But an appeals court upheld a determination based upon contemporary standards.[23] While the U.S. Supreme Court in Pope found that a statewide community standard violates the First Amendment, the Court nevertheless remanded the case to the Illinois Court of Appeals for determinations on the difficult value question. If that court would find that a rational juror instructed that "to convict they must find, ...the magazines petitioners sold were utterly without redeeming social value," then the error of applying a statewide community standard would be harmless and the convictions could stand.[24]

In a concurrence, though, Justice Scalia questioned the Miller third prong and argued that the Court needs to rethink the law:

> In my view it is quite impossible to come to an objective assessment of (at least) literary and artistic value, there being many accomplished people who have found literature in Dada, and art in the replication of a soup can. Since ratiocination has little to do with esthetics, the fabled "reasonable man" is of little help in the inquiry, and would have to be replaced with perhaps, the "man of tolerably good taste" -- a description that betrays the lack of an ascertainable standard.25

Scalia went on to say: "I think we would be better advised to adopt as a legal maxim what has long been the wisdom of mankind: De gustibus non est disputandum. Just as there is no use arguing

about taste, there is no use litigating about it.[26] But in a dissent by Justice Stevens, joined by Marshall, an argument was made that jury behavior in such cases is not only affected by the content in question, but also the courtroom environment.[27] The majority should not trample the rights of the minority. Even sexually-oriented content enjoys constitutional protection where some reasonable persons find a value.

The courts have more generally said that "our whole constitutional heritage rebels at the thought of giving government the power to control men's minds."[28] But control is problematic. There seems to be no question that the government may persuade men's (or women's) minds, but the line between persuasion and control is often fuzzy. For example, government regulation of the content of public television programs was limited by legislative act, but: "there is nothing to suggest that, absent such limitation, government is restrained from speaking any more than the citizens," a lower court has held.[29] And government content does not have to be neutral.[30]

These broad views on information control should be kept in mind as the Meese v. Keene decision is studied. The case centered on the right of the government to label certain films as "political propaganda."

The Case of Meese v. Keene

Early in 1983, Joseph E. Clarkson, chief of the Registration Unit, Internal Security Section, Criminal Division, United States Department of Justice, informed the National Film Board of Canada that three of its documentaries were to be labeled as "political

propaganda."[31] The films were: If You Love This Planet; Acid Rain: Requiem for Recovery; and Acid from Heaven.

The designation under the Foreign Agents Registration Act[32] meant that film issuers would be required to register as agents, they would be required to label films, and they would be required to file dissemination reports with the Justice Department identifying all theatres and other locations where the films were shown.[33] The labels were to advise viewers that the films were products of foreign governments.

Critics of the policy said the warnings were unreasonable since the films were "documentaries of considerable merit."[34] The 1938 Act being applied in 1983 had been enacted as a mechanism devised to combat "un-American activities." Critics charged that the Reagan administration had misused its powers on the friendly nation of Canada.[35] The Christian CENTURY quoted reaction. Canada's Environment Minister John Roberts called the decision "bizarre and petty." U.S. Senator Gary Hart said, "Thomas Jefferson would be appalled." And film distributor Mitch Block described the decision as "scary."

The legal challenge by a would-be exhibitor, state senator and member of the California bar challenged constitutionality of the statute.[37] On First Amendment grounds, the plaintiff Barry Keene argued that the films on nuclear holocaust and acid rain were tools of free speech, and he would be deterred from showing them because his professional and political reputation might suffer if he were associated with "political propaganda."[38]

At the time of the legal challenge, the National Film Board

of Canada since 1947 had registered under the Act as "agent of a foreign principal," but William french Smith's department had adopted special rules.[39] The original Act prohibited dissemination by registrants of any "political propaganda" absent conspicuous marking with a four-part statement: (1) explanation of the relationship between the distributor and the propaganda; (2) disclosure to the audience that the supplier is an agent; (3) reporting that the registration statement is filed in Washington for public inspection; and (4) that registration "does not indicate approval by the United States of the material."[40] The Attorney General, thus, required distributors to file an affidavit certifying that the label was included in the film and directed to file monthly dissemination reports.[41]

District Court Judge Ramirez found that since the films were to be shown in a non-commercial context, there was little doubt that Keene wanted to use them to communicate his own ideas and "influence public opinion."[42] He found that the content-sensitive statute was a significant threat to First Amendment rights.[43]

> Defendants suggest that the ordinary individual understands that the phrase "political propaganda" is used often with neutral connotation as it is with negative connotation. To the extent that this argument is sincere, it is fatuous. "Political propaganda" is ordinarily and commonly understood to mean material that contains half-truths, distortions, and ommissions. To characterize a particular expression of political ideas as "propaganda" is to denigrate those ideas.[44]

Judge Ramirez found that he could not turn "propaganda" into a term of art since statutory construction of words are interpreted as taking ordinary, contemporary and common meaning.[45] And where constitutionality of statutes is under review, "courts are obliged to subject these statutes to 'exacting scrutiny.'"[46]

There seems little doubt that the 1938 Act was written to "publicize the nature of subversive or other similar activities of such foreign propagandists so that the American people may know those who are engaged in this country by foreign agencies to spread doctrines alien to our democratic form of government, or propaganda for the purpose of influencing American public opinion on a political question."[47] Keene received a preliminary injunction enjoining the label "political propaganda" from being affixed to the three films in question.

On a motion to alter the original judgment, the district court on Oct. 29, 1985, held that the phrase "political propaganda" in the Act abridged free speech and was unconstitutional, and the court granted Keene summary judgment; the Department of Justice was: "permanently enjoined from enforcing any portion of the Foreign Registration Act which incorporates the term 'political propaganda' as a term of art."[48]

The court distinguished the Keene case from a separate action by Block,[49] finding that in that case the plaintiffs had not alleged that the action violated fundamental rights.

At the heart of the First Amendment abridgment aspect of the Keene case was that "propaganda" is most often considered as a "semantically slanted word."[50] Judge Ramirez cited a declaration by Leonard W. Doob, senior research associate and Sterling professor emeritus of psychology at Yale University. Doob's World War II propaganda analysis is part of a body of social research during the period concerned with "the battle for the minds of men." Judge Ramirez in Keene also reviewed dictionary definitions

and found that the word "propaganda" is ordinarily "a word of reproach."[51] In an analysis of the 1983 case, it appeared that the original ruling distinguished between Keene as a politician who could suffer a loss of reputation: "the injury must be peculiar to the plaintiff, rather than one shared in substantially equal measure by all or a large class of citizens."[52] But the 1985 ruling had broad constitutional implications that would be considered by the Supreme Court.

Reversed by the High Court

As the case came to the Supreme Court, justices were faced with the holding that: (1) "propaganda" is a semantically slanted word of reprobation; (2) use of the term rendered the regulated material unavailable to citizens wishing to use them for purposes of free expression; (3) no compelling state interest justified such a pejorative label; and (4) therefore, the use of the term was invalid abridgment of free speech.[53]

The 5-3 decision written by Justice Stevens, and joined by Rehnquist, White, Powell and O'Connor, reversed the lower court and found that there was no violation of the First Amendment.[54] Justice Scalia didn't take part in the decision, but he had spoken from the U.S. Court of Appeals, District of Columbia Circuit in 1986, writing in Block v. Meese: "In short, it seems to us that in labeling something 'propaganda' the government is not expressing its own disapproval but is merely identifying an objective category of speech of which the public generally disapproves. Unless the identification itself is inaccurate or unconstitutional ... there is no conceivable basis for a first

amendment objection."[55] But Block had not alleged this, as Keene had. Scalia, Bork and Wright were clearly not comfortable with the term, "propaganda" as used in the Act: "Though dictionaries (which are mercifully not compiled by lawyers) do not draw such refined distinctions, it seems to us less accurate to say that the use of the word 'propaganda' is pejoration, than that the social convention of not using it refer to ideological efforts that one favors constitutes euphemism. In any case, we do not think the Constitution requires the United States Code to be semantically updated periodically so that its words not only say what they mean but also have no current pejorative coloration."[56]

The Supreme Court majority held that labeling films as "political propaganda" does not violate the First Amendment since: (a) the Act does not prohibit, edit or restrain distribution; (b) there is no evidence that public perception about "propaganda" actually impacted adversely on distribution; and (c) the term "propaganda" has no pejorative connotation as defined by statute since its definition also includes materials that art accurate and deserving respect and attention.[57]

The majority found that the mere label did not directly prevent Keene from obtaining or exhibiting the three films. The majority distinguished the case from the holding in Lamont v. Postmaster General[58] because no scheme was created that would have the effect of limiting access. And since Congress did not "prohibit, edit, or restrain the distribution of advocacy materials," no violation of free expression was found: "To the

contrary, Congress simply required the disseminators of such material to make additional disclosures that would better enable the public to evaluate the import of the propaganda."[59]

Placed in other words, the majority viewed the Act as simply a way to let the public know about the source of the information. The majority rejected the idea that labeling was anything more than identification. What else could it be? Block's lawyers had argued that the classification "rigs the marketplace of ideas" by officially branding "the content of the films as false and misleading."[60] But the Court majority in Keene suggested that "our people, adequately informed, may be trusted to distinguish between the true and the false."[61] Open channels of communication rather than closed ones, the majority said, allows people to make their own judgments as to source and message credibility.[62] At the center of the debate may be the entire question of paternalism and whether or not people need a label to judge credibility. The majority was not concerned with the label since it had been neutrally applied in a long list of films produced by adversaries and allies.[63]

In a dissent on the constitutional question written by Justice Blackmun, and joined by Brennan and Marshall, it was argued that the Act amounted to an indirect method of censorship. The Act was a reaction to Nazi propaganda.

> The Act mandated disclosure, not direct censorship, but the underlying goal was to control the spread of propaganda by foreign agents.[64]

Because it was felt that publicity about the sources of propaganda would be a deterrent to subversion, the intent of the

Act followed the research thinking of the war years by social scientists about the effects of content upon attitude change, evaluations of source credibility, one and two-sided message presentations, and primacy and recency effects.[65]

The Court minority in Keene emphasized the concern of the appellee: "his speech is deterred by the common perception that material so classified is unreliable and not to be trusted, bolstered by the added weight and authority accorded any classification made by the all-pervasive Federal Government."[66]

It is odd to see that both the majority and minority decisions of the Court presume to know what effects will and will not come from the labeling process, absent any data on the question. Both groups treat the audience broadly. The minority on the Court adopts a mass society view that people generally accept what the government says, even about film content. But on some audience members, we might hypothesize that the effect of the government label would be the reverse: such a label for critics of government ought to lend higher credibility to the film messages.

Objectionable Materials

The Court minority, in its concern over indirect "coercive effect of speech,"[67] draws the broad legal analogy of objectionable materials by comparing the case of political propaganda with that of control over obscenity through formal sanctions. In one such case, Bantam Books., Inc. v. Sullivan, a statute authorized a commission to suppress publications that it deemed "objectionable."[68] It is argued by the minority that

the majority ignored the practical effect of the Act in question in the present case, the risk of being associated with materials classified as "propaganda" and the subsequent burden on discourse.

> For the film to carry its full force and meaning an exhibitor must attempt to dispel skepticism flowing from the notion that the film is laced with lies and distortions. These burdens are too great and too real in practical terms to be ignored simply because they are imposed by way of public reaction rather than direct restriction on speech.69

The term "political propaganda," however, to this author seems problematic. While it may taint content carrying the label, it may not. This would seem to rest on the predispositions of the individual audience member. Under certain circumstances it may carry a neutral meaning in the purely statutory sense.

But the prevailing view that treats the Department of Justice labeling as a consensus of general public opinion would seem to raise serious questions. Who decides what is and what is not "political propaganda" in the process? What gives Justice Department personnel the ability to judge the content? And from a purely scientific content analysis perspective, what is the coding scheme and what rules are applied?[70]

In Meese v. Keene the Court failed to deal with the questions about persuasion from the body of knowledge that exists. It considered some and rejected other "evidence" without regard for the role of theory in science.

Social Science as Evidence

The 1930s and 1940s were critical in the evolution of the meaning of the term "propaganda" in America. The apparent success

of the "Nazi propaganda machine" had raised fear levels. During the early years, thinkers seemed to place more importance on the ability of the propagandist to persuade rather than on the significance of coercion and group pressures to conform. The war years, though, led to collection of data.

Some early and important definitions were established in such publications as The Fine Art of Propaganda (1939) and others. Propaganda was defined as "opinion expressed for the purpose of influencing actions" or "any attempt to persuade persons to accept a certain point of view." Under such definitions any effective communications must be considered propaganda. "Tricks of the trade," as they were called then, were emphasized. The audience was asked to guard against "manipulation."[71]

Later, Fellows suggested that propaganda could be seen as a form of communication or as a method seen through the intentions of the speaker:

> Studies claiming to deal with "propaganda" have often been based on one-dimensional concepts; they have taken one aspect of communication (sponsor, content or technique) as a formal basis for definition, although they have sometimes implicitly used other bases in selecting and evaluating samples. Where studies have different bases, their working definitions may not be so much conflicting as overlapping. Comparison and analyses are difficult in such a situation.[73]

Thus, social science itself may, in part, be to blame for much of the early definitional confusion about the term propaganda that apparently carries over to today.

As World War II ended, social scientists had factored in the role of active audiences in the study of rumors.[74] It became apparent that context of a message is very important in the

interpretation of message content by individuals. Media content can have various meanings for audience members processing and talking about the messages. While messages can be reduced to short, concise bits of easily grasped and retold segments, individuals appear to be guided by their own selectivity: habits, interests and sentiments guide information processing.[75] Messages are selectively attended to, the research suggests, as the prejudices of individuals can distort meaning or intended meaning.

By 1952, White said the population appeared to be developing a new resistance to propaganda:

> The world is more and more tired of "propaganda." This is the fundamental, all-embracing fact which every propagandist must face, and the implications of which he must recognize, if he is to have an entree into the minds of those who are not already emotionally on his side. The psychological resistances of a skeptical, propaganda-weary world must be respected and intelligently taken into account; they cannot be simply battered down.[76]

During the 1950s it was suggested that audience research could try to "identify contextual characteristics" that produce "specific impressions among particular audiences" and lead to perceptions that content is "propagandistic" or "objective" -- "inspiring" or "dull."[77] But even at this point in the research tradition, propaganda was defined as essentially a battle in "the worldwide tug-of-war for the minds of men."[78]

Hovland's classic experiments on persuasion, though, helped to build a theory of communication on the foundations of learning theory. Controlled experiments placed emphasis on the motivations of individual receivers of messages, defined attitudes as a "predisposition to respond," and noted how group membership can

be an important intervening variable as media messages also flow through social settings via interpersonal communications.[79]

Two concepts, "effects" and "attitude change" dominate the research of the period. For the first time since the early work of Lasswell,[80] propaganda began to be viewed as something that could be studied within the more general framework of persuasion. Control of opinions could be attempted by use of symbols, stories, reports or pictures. Today researchers tend to separate the concept of propaganda from persuasion; propaganda tends to be seen as communication favoring the interests of the source at the expense of the audience.[81] However, this distinction can be seen as largely an artificial one.

Lerbinger[82] has found five basic designs in persuasive communications, and concepts such as stimulus-response, motivation, cognitions, social settings and personalities dominate to varying degrees. There is no one interpretation of a message. At the same time, one must remember that "attitudes," even if changed (by the message and/or other factors), do not always correlate with behavior.[83] Ultimately, an attitude change may have no long-term behavioral impact on the individual. In the case of the films in question, we must ask, what impact would an attitude change about acid rain or nuclear war have for the audience? What could they go out and do with their new attitudes, assuming the films were so persuasive for some that it activated them to a cause? And how will the label "political propaganda" serve as a

deactivating device?

Reardon[84] suggests that people may at times be irrational, but they generally tend to seek and select behaviors consistent with their past behaviors. Thus, the answer to the above questions may be:

> Knowing that people prefer to be consistent in their rule-following behavior and desire to be perceived as doing what is appropriate and effective, persuaders can create conditions for change by bringing into question the consistency, appropriateness, or effectiveness of persuadee behavior(s). Sometimes people will sacrifice consistency for appropriateness/effectiveness and vice versa, thereby facilitating behavioral change. In the selection of appeals, the persuader must decide whether, given the specific contextual conditions, consistency, appropriateness, or effectiveness holds the highest priority in the mind of the persuadee.85

By applying the existing social research to the term "political propaganda" as considered by the Court, a game of semantic gymnastics emerges. Persons are asked to judge the motives of the source(s) and receiver(s) without regard for particular context and potential effectiveness of the message(s). In the Justice Department, officials appear to apply a "bullet theory" concern over the messages broad mass effects on the audience. The Court in Meese v. Keene, however, took a very limited view of social science research as evidence. Likewise, it also did not consider studies on the role of free expression in democracies.

Current Press Models

The early conceptualizations of press freedom trace libertarian values of a people willing to criticize government officials and their policies.[86] But do such values for free expression prohibit the government from statutory film

labeling?

The general answer would seem to be that because a foreign film enters a country from outside its borders, producers do not share in a freedom of expression directly. But citizens wishing to view films appear to enjoy full first amendment rights. The decision in Meese v. Keene, from a press model perspective, places the United States in a somewhat anti-libertarian location on the various typologies.[87]

The Court dodges the libertarian notion that rational men can discern truth from falsehood in one sense but embraces it in another. It treats the label as added information, not censorship. But it also puts the label in the hands of the elite of the power structure. But do audience members gain by knowing the source? And why does source identification require the added burden of the label?

Nord's[88] theory has libertarian and authoritarian systems low on economic controls, but the authoritarian systems are distinguished by high levels of government control. Is the label government control, per se? It, as a tool of control, is more indirect than the direct prior restraint a government may impose. But what are the sources of the control?

Smith's[89] typology reveals that the Justice Department label of "political propaganda" appears not strong enough to fall into what would be called formal legal control on society (censorship, licensing, regulation, sedition, contempt, blasphemy, antitrust, taxes, subsidies or allocations). The regulation is subtle. And yet the labeling process, in the eyes of those who disagree with the government's official views, is harmful because it may

lead to extra-legal social pressures on individuals to conform. Keene, a politician, unsuccessfully argued that showing the films with the label might lead his voters to toss him out of office at the next election, solely because he sponsored the showing of something the government calls "political propaganda." He fears the irrationality of the public. In Meese v. Keene neither side seems to have great faith in a rational public or the marketplace of ideas that argues truth wins out over falsehoods.

A Model of Objectionable Material

What does a society say in its extra-legal regulation of film content? A label such as "political propaganda" suggest that officialdom seeks to warn the public that material may somehow be objectionable to the majority view, just as we warn parents of small children that some things may not be fit for consumption by all.

It may not make sense, for theoretical purposes, to distinguish between messages defined as "political propaganda" and other types of objectionable material. Politics, historically, has been tied closely to other core issues (religious tolerance, morality, obscenity or accepted norms). The label suggests that the material might somehow endanger societal stability if not understood for what the regulator sees it as -- apparently harmful to somebody. Government applies an inoculation theory[90] as a third party attempting to work between source and receiver. It has been argued that attitudes can be made resistant to change prior to exposure.

Where a weak attitude or no previous disposition exists, one may be established.

The government label strikes at the credibility of both the source and its message. The audience, implicitly, is urged to avoid viewing or at least be aware. Thus, the Court adopts a rather traditional "tricks of the trade" view of propaganda.

From an individual differences view, though, some viewers may see the label and give higher credibility to the messages. Critics of government and its official policies may bring a different point of view, a different context and a different set of predispositions to judge credibility of the label itself. And such labels may also add a forbidden fruit aspect to such content that may add to its demand by some groups.

A model of objectionable material might view appeal levels and agreement of content and policies as variables. Propaganda can be defined as material high on emotional appeal which does not agree with current expressed policy. Definitions, thus, may tell as about the motives of those who apply the labels. At the very least, it can be said that government regulation implies that message content is somehow inconsistent with values that drive the person or persons with control over the labeling decision.

Any model of objectionable material, however constructed, would or could lead to a showing that the label "political propaganda" fails because it is too message centered; it fails to address the audience role in interpretation.

Conclusions

Persuasion, as it is generally used today, is a relatively neutral term,[91] yet "much of what we call persuasion -- advertising copy, presidential campaign speeches, the defense attorney's appeal to the jury, parents' lectures on acceptable morality -- comes closer to qualifying as propaganda than education."[92] In this essay the contrast between propaganda and education was avoided, and the Court avoided it, too. Psychological theory, however, suggests that such messages are limited in effectiveness without intervention of interpersonal communications as aiding through message repetition and reinforcement.[93]

Recent interest in propaganda study[94] comes in spite of the definitional problems. Most still tend to associate the term with deliberateness and manipulation. Propaganda continues to carry a negative connotation which "can cause some confusion between scholars, politicians, and lay people, as is evidenced by published work on the subject.[95]

The majority in Meese v. Keene take the view that the term "political propaganda" is neutral, but except for the narrow legal fiction of statutory language, this cannot be satisfactory. The dissenters argue that the label burdens discourse without serving a strong governmental interest. Rather than promoting pluralism, the use suggests a singular view of "truth." Who decides what is truth? How do determinations jibe with known realities?

In questioning judicial assumptions that may be wrong, researchers in the future may seek to empirically test hypotheses

about how the label "propaganda" affects audience members.

Judges relying on legal conceptions struggle with decisions that involve the communications processes and its effects. Avoiding the depth of social research available, they weakly treat bits of research as "evidence." More study needs to be done on this.

Just as Justice Scalia recently questioned the value of litigating questions of taste because objective standards are not easily secured, the same may be said for litigating about what is and what is not "political propaganda." Ultimately, no matter what the regulators or courts say, the individual must decide. But to what extent the label impacts on that decision, we do not know. We also do not know what long-term behavioral effects result from such an individual determination.

NOTES

1
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16
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17
Schenk v. United States, 249 US 47 (1919).

18
Bridges v. California, 314 US 252 (1941).

19
Near v. Minnesota, 283 US 697 (1931).

20
Miller v. California, 413 US 15, 37 L Ed 2d 419, 93 S Ct 2607 (1973).

21
Paris Adult Theatre I v. Slaton, 413 US 49, 37 L Ed 2d 446, 93 S Ct 2628 (1973).

22
Pope v. Illinois, 481 US ___, 95 L Ed 2d 439, 107 S Ct 1918 (1987).

23
Id., at 444.

24
Id., at 447.

25
Id., at 448.

26
Id.

27
Id., at 454: "Studies have shown that an opinion held by a large majority of a group concerning a neutral and objective subject has a significant impact in distorting the perceptions of group members who would normally take a different position."

28
Stanley v. Georgia, 394 US 557, 22 L Ed 2d 542, 89 S Ct 1243 (1969).

29
Muir v. Alabama Ed. Television Com'n, 668 F 2d 1033 (1982), fn. 12.

30
Id., at 1050. The government is often an active propagandist, in the traditional sense of the word. For examples: United States Information Agency, Helping Tell America's Story, USIA Private Sector Committee Report (1985). Popular Press analysis can be found in, "Reagan's Drive To Win Over World Opinion," U.S. News and World Report, Aug. 1, 1983, p. 39, and "The Great War of Words," Time, Sep. 9., 1985, p. 32.

31
E.A. Rothschild, "If You Love These Films," Bulletin of the Atomic Scientists, June/July 1983, p. 39.

32
22 USCS 614; 67 ALR Fed 774.

33
67 ALR Fed, 781-2, 3(b), 5(a).

34
Rothschild.

35
Id.

36
The battle has also been fought over films to be exported, according to The NEWS Media & The LAW, Fall 1987, p. 9: "USIA was refusing to process applications covering nearly 2,700 audio visual works. Documentary film makers had challenged the rules, claiming that the Reagan administration was denying certification to films critical of its policies." The films in question were about war, Nicaragua, drug use, sexual behavior and Vietnam.

37
Keene v. Smith, 509 F.Supp. 1513 (1983).

38
Id.

39
Id.

40
Id.

41
Id.

42
Id., at 1517.

43
Id., at 1520.

44
Id.

45
Id.

46
Id.

47
Id., at 1521.

48
Keene v. Meese, 619 F.Supp. 1111 (D.C. Cal 1985).

49
Block v. Meese, 13 Med. L. Rptr. 1209 (1986).

50
Supra, note 48.

51
Id.

52
Id.

53
Meese v. Keene, op. cit.

54
Id.

55
Supra, note 49.

56
Block v. Meese, at 1214.

57
Meese v. Keene.

58
381 US 301, 14 L Ed 2d 398, 85 S Ct 1493 (1965).

59
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